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**UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA**

Robert Miller,

Plaintiff,

v.

4Internet, LLC; and John Does 1-10,

Defendants.

Case No. 2:18-cv-02097-JAD-VCF

United States' Acknowledgement of Constitutional Challenge

On July 23, 2020, Defendant 4Internet, LLC filed a notice of constitutional
challenge with respect to 17 U.S.C. §§ 102 and 410. ECF No. 49. Although the United
States may intervene in any action wherein the constitutionality of an act of Congress is
challenged, 28 U.S.C. § 2403, here the constitutional challenge has only been raised in
Defendant’s Amended Answer. *See* ECF No. 29. The United States is unaware of any
memorandum or other filing that details the basis of Defendant’s constitutional challenges or seeks
any ruling striking down the provisions identified above. Moreover, given that the case
is at its early stages, there is some possibility that this case may be resolved without the
Court having to decide any of the constitutional challenges asserted by Defendant.
Therefore, the United States believes that intervention would be premature at this time. *See*
Pilkil Co. v. Bernard, 452 U.S. 89, 99 (1981) (“[P]rior to reaching any constitutional
question, federal courts must consider nonconstitutional grounds for decision.”).

The Solicitor General decides whether to approve intervention by the United States, 28 C.F.R. § 0.21. Obtaining the Solicitor General's approval generally takes several weeks. Therefore, if Defendant seeks a ruling from the Court on the constitutionality of 17 U.S.C. §§ 102 and/or 410 in a dispositive motion or other filing, the United States respectfully requests that, as Federal Rule of Civil Procedure 5.1 and 28 U.S.C. § 2403 require, the Court notify the United States of that challenge and permit the United States to intervene within sixty days of that notice.

Respectfully submitted this 24th day of September 2020.

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United States Attorney

/s/ Skyler H. Pearson
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Assistant United States Attorney